

**ARKANSAS DEPARTMENT OF
LABOR**

PREVAILING WAGE DIVISION

**LAWS AND
ADMINISTRATIVE
REGULATIONS**

Promulgated

by

ARKANSAS DEPARTMENT OF LABOR

Little Rock, Arkansas

PREVAILING WAGE REGULATIONS

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Chapter 1 - GENERAL PROVISIONS

1.100 Purpose and Scope.

(a) These rules and regulations are promulgated by the Arkansas Department of Labor pursuant to the authority granted by Ark. Code Ann. § 22-9-307 (1987). These rules and regulations are applicable under the minimum prevailing wage law, Ark. Code Ann. §§ 22-9-301 through -313 (1987), which provides that a wage of not less than the minimum prevailing hourly rate of wage for work of a similar character in the county in which the work is performed shall be paid to all workmen employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

(b) The purpose of these regulations is to set forth the procedure for making and applying prevailing wage determinations; to detail the obligations of contractors, subcontractors and public bodies; to set forth the procedures for the administration and enforcement of the minimum prevailing wage law; and to set forth the procedures or rules of practice for administrative proceedings under the minimum prevailing wage law.

(c) These regulations apply to the construction of all public works where the cost of all labor and material exceeds seventy-five thousand dollars (\$75,000.00).

(d) These regulations do not apply to:

(1) The construction of public works where the cost of all labor and material is seventy-five thousand dollars (\$75,000.00), or less;

(2) Maintenance work performed by or on behalf of a public body;

(3) Any work done for or by any drainage, improvement, or levee district;

(4) Workers who are employed as part-time or full-time employees of any public body;

(5) Highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department; and

(6) Any public school construction, unless federal matching funds are employed in paying for the construction.

1.101 Definitions.

(1) "Apprentice" means

(i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or

(ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Building construction" means generally the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment may not change the project's character as a building. Examples of building construction follow:

Alterations and additions to nonresidential buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City halls
Civic centers

Commercial buildings
 Court houses
 Detention facilities
 Dormitories
 Farm buildings
 Fire stations
 Hospitals
 Industrial buildings
 Institutional buildings
 Libraries
 Mausoleums
 Motels
 Museums
 Nursing & convalescent facilities
 Office buildings
 Out-patient clinics
 Passenger and freight terminal buildings
 Police stations
 Power plants
 Prefabricated buildings
 Remodeling buildings
 Renovating buildings
 Repairing buildings
 Restaurants
 Schools
 Service stations
 Shopping centers
 Stores
 Subway stations
 Theaters
 Warehouses
 Water & Sewage treatment plants (building only)

(3)"Classification" means the occupation of a workman based on duties actually performed;

(4)"Construction" means construction, reconstruction, improvement, enlargement, alteration, painting and decorating or major repair, where the cost of all labor and material exceeds seventy-five thousand dollars (\$75,000.00). The term includes all work done in the construction or development of the project,

including without limitation, altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transportation of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work by persons employed by the contractor or subcontractor. The term does not generally include manufacturing, furnishing materials only, landscaping, or servicing and maintenance work;

(5) "County" means the county where the physical work upon the public works is performed;

(6) "Davis-Bacon Act" means 40 U.S.C. § 276a et seq.;

(7) "Department" means the Arkansas Department of Labor;

(8) "Heavy construction" means those construction projects that are not properly classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogenous classification. Because of its catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate wage determinations. Examples of heavy construction follow:

Antenna towers
 Bridges (major bridges designed for commercial navigation)
 Breakwaters
 Caissons (other than building or highway)
 Canals
 Channels
 Channel cut-offs
 Chemical complexes or facilities (other than buildings)
 Cofferdams
 Coke ovens
 Dams
 Demolition (not incidental to construction)
 Dikes
 Docks
 Drainage projects

Dredging projects
 Electrification projects (out-door)
 Flood control projects
 Industrial incinerators (other than building)
 Irrigation projects
 Jetties
 Kilns
 Land drainage (not incidental to other construction)
 Land leveling (not incidental to other construction)
 Land reclamation
 Levees
 Locks, waterways
 Oil refineries
 Parking lots
 Pipe lines
 Ponds
 Pumping stations (prefabricated drop-in units)
 Railroad construction
 Reservoirs
 Revetments
 Runways
 Sewage collection and disposal lines
 Sewers (sanitary, storm, etc.)
 Shoreline maintenance
 Ski tows
 Storage tanks
 Swimming pools (outdoor)
 Subways (other than buildings)
 Taxiways
 Tipples
 Tunnels
 Unsheltered piers & wharves
 Viaducts (other than highway)
 Water mains
 Waterway construction
 Water supply lines (not incidental to building)
 Water and sewage treatment plants (other than buildings)

Wells

(9) "Highway, road, street, or bridge construction" shall include the construction, alteration or repair of roads, streets, highways, alleys, trails, paths, and other similar projects not incidental to building or heavy construction. Examples of such construction may include:

Alleys
 Excavation and embankment (for road construction)
 Fencing (highway)
 Grade crossing elimination (overpasses or underpasses)
 Guard rails on highway
 Highway signs
 Highway bridges (overpasses; underpasses; grade separation)
 Medians
 Resurfacing streets and highways
 Roadbeds
 Roadways
 Shoulders
 Stabilizing courses
 Storm sewers incidental to road construction
 Street paving
 Taxiway

Such "highway" construction which does not qualify for the exemption contained in Ark. Code Ann. § 22-9-303(b) and Regulation 1.100(d)(5) shall be considered "heavy construction."

(10) "Locality" means the following eighteen (18) areas of the state:

- (a) Pulaski & Saline Counties;
- (b) Faulkner & Lonoke Counties;
- (c) Jefferson County;
- (d) Crawford & Sebastian Counties;
- (e) Washington County;
- (f) Clark, Garland & Hot Spring

Counties;

(g) Crittenden, Cross, Lee, Phillips & Saint Francis Counties;
 (h) Columbia, Hempstead, Lafayette, Little River & Nevada Counties;
 (i) Miller County;
 (j) Conway, Franklin, Johnson, Logan, Perry, Pope & Yell Counties;
 (k) Clay, Craighead, Green, Mississippi & Poinsett Counties;
 (l) Arkansas, Jackson, Monroe, Prairie, White & Woodruff Counties;
 (m) Ashley, Calhoun, Chicot, Ouachita & Union Counties;
 (n) Howard, Montgomery, Pike, Polk, Sevier & Scott Counties;
 (o) Benton, Boone, Carroll, Madison & Newton Counties;
 (p) Bradley, Cleveland, Dallas, Desha, Drew, Grant & Lincoln Counties;
 (q) Baxter, Cleburne, Marion, Searcy, Stone & Van Buren Counties;
 (r) Fulton, Independence, Izard, Lawrence, Randolph & Sharp Counties;

(11) "Maintenance work" means the repair, but not the replacement of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased;

(12) "Minimum prevailing wage rates" means the wages paid, generally, in the county in which the public works are being performed, to workmen engaged in work of a similar character. In determining minimum prevailing wage rates, the department will follow the procedures established in Regulation 2.100 herein;

(13) "Public body" means the State of Arkansas or any officer, board, or commission of the state, any county, city, municipality or other political subdivision, or any of the agencies thereof;

(14) "Public Works" means all works constructed for public use, whether or not done under public supervision or direction or paid for wholly or in part out of public funds, but it

does not include any work done for or by any drainage, improvement, or levee district;

(15) "Recognized management - labor apprenticeship training program" means an apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or with a state apprenticeship agency recognized by the Bureau;

(16) "Residential Construction" means the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary. Examples of residential construction may include:

- Town or Row houses
- Apartment buildings (4 stories or less)
- Single family houses
- Mobile home developments
- Multi-family houses

(17) "Wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" means and includes:

- (A) The basic rate of pay and
- (B) Fringe benefits which are the amount of
- (i) The rate of contribution irrevocably made

by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

- (ii) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, for medical or hospital care, pensions or retirement, or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits,

but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits;

(18) "Work of a similar character" means construction work, generally, and construction work of any particular classification or occupation, specifically and work which is either "building", "heavy", "highway" or residential; and

(19) "Workmen" means laborers, workmen, and mechanics, but special rates for apprentices shall apply only when the apprentice are registered in a recognized management-labor apprenticeship training program.

Chapter 2 – PREDETERMINATION OF WAGE RATES

2.100 Obtaining and Compiling Wage Rate Information.

(a) In determining prevailing wage rates based on information obtained pursuant to this Regulation, the prevailing wage shall be determined as the wage paid to the majority (more than 50 percent) of the workmen in the classification on similar projects in the county or locality during the period in question. If the same wage or the union wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.

(b) (1) For the purpose of making wage determinations, the department will conduct an annual survey seeking the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations and other interested parties, reflecting wage rates paid to workmen on various types of construction in the state. The department may also obtain data from public bodies and federal agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, or state projects subject to Arkansas' prevailing wage requirements. The type of construction shall mean whether such construction is

"building", "heavy", or "residential". The department shall solicit wage rate data only on building and heavy construction jobs.

(2) Wage rate data shall be submitted on a form approved by the department and shall include the name and address of the contractor; the project title; the location, approximate costs, dates of construction and type of construction; the number of workman employed in each classification; and the respective wage rates paid such workmen.

(3) The annual survey shall commence on or about September 1, of each year and shall solicit wage rate data for the previous twelve (12) months. Wage rate data shall be accepted through January 31 of each year.

(c) (1) Wage determinations shall be made annually on or about July 1 of each year and certified copies shall be filed in the offices of the Arkansas Department of Labor, 10421 West Markham, Little Rock, Arkansas. Copies shall be furnished to all persons requesting them.

(2) Wage determinations for each county should be made based on wage data obtained from construction in that county unless sufficient current wage data (data on wages paid on current projects under construction no more than one year prior to the beginning of the survey) is unavailable to make a wage determination for each county in the locality without consideration of the rates paid generally within that locality.

(3) Wage determinations shall be based on wage rate data obtained in accordance with the provisions of Regulation 2.100(b) unless sufficient current wage data is unavailable for the county or locality. Wage determinations for residential construction shall be made based on the provisions of Regulation 2.100(d).

(d) If there is not sufficient wage rate data obtained as the result of the annual survey provided by Regulation 2.100(b), the department shall certify as prevailing the previous year's rates on those crafts for which there is insufficient wage data and new rates on those crafts for which there is sufficient current wage data. For those crafts in which the previous year's rates are certified as prevailing, the department may certify new rates after additional fact-finding which may include an examination of the following types of information:

(1) Wage rates established by collective bargaining agreements applicable to the area where the work is to be performed;

(2) Wage determinations by the United States Department of Labor for federal or federally assisted projects subject to the Davis-Bacon Act within the State of Arkansas; and

(3) Wage rates found by the Director to be prevailing after public hearing(s) in the county or locality.

(e) In deciding whether there is sufficient wage rate data obtained as the result of the annual survey to make prevailing wage determination pursuant to 2.100(c) the department shall consider the following as insufficient:

(1) Wage rate data was supplied by only one (1) contractor for any classification, or

(2) Wage rate data was supplied for fewer than six (6) workmen for any classification.

(f) In deciding whether there is sufficient current wage rate data within the meaning of 2.100(c)(2), the department shall consider whether the data would support a wage determination for at least ten (10) key classes for building rates and eight (8) key classes for heavy rates. Additionally, the department may determine that there is insufficient wage rate data obtained from the annual survey if the data for any county, locality, or classification is significantly less than the data obtained from the previous year's survey or is significantly less than the data that could reasonably be expected based on the amount of construction in the county or locality during the survey year.

(g) Fringe benefits.

(1) Minimum prevailing wage rates include the prevailing basic hourly rate and the prevailing rate of contribution or costs for bona fide fringe benefits.

(2) In determining whether there is a prevailing rate of contribution or cost for bona fide fringe benefits, the department shall determine if the majority (more than 50 percent) of the workmen in the classification on similar projects in the county or locality during the period in question had such benefits. If a majority of those employed in the classification had such benefits, an hourly rate of contribution or cost will be reflected in the wage determination.

(3) Fringe benefit rates shall be compiled or

calculated in the same manner as the basic hourly rate in determining minimum prevailing wage rates. See Regulation 2.100(a).

(4) In the event fringe benefits are not prevailing, nevertheless, the entire wage package (the basic hourly rate and the rate of contribution of fringe benefits) shall be compiled with the wage rate data on the basic hourly rate to determine minimum prevailing wage rates.

(h) Wage rate data submitted on projects other than construction projects shall not be considered. Wage rate data submitted on projects where the total costs of labor and materials does not exceed two thousand dollars (\$2,000.00) shall not be considered.

(i) (1) In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple determination" issued if the construction items are substantial in relation to project cost -- more than 20 percent. Only one determination is issued if construction items are "incidental" in function to the overall character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category.

(2) In cases involving a mixed project on which a multiple determination (e.g., building and heavy rates) is issued, building rates shall be applicable for a distance extending five (5) feet from any building on the project.

(j) Wage rate data on federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, or state projects subject to Arkansas prevailing wage requirements shall not be considered in determining prevailing wage rates for building construction projects. Such information shall be considered in determining prevailing wage rates for heavy construction projects.

2.101 Requesting Wage Determinations.

(a) Before any public body excluding the Arkansas State Highway and Transportation Department, awards a contract or begins supervised construction for public works, it

shall notify the department to ascertain the prevailing hourly rate of wages in the county in which the work is to be performed, for each craft or type of worker needed to execute the contract or project.

(b) Notification to the department shall be made on Arkansas Prevailing Wage Form 1(ARK. PW-1) stating the name of the agency submitting the request, location of the proposed project, estimated value of the contract and a complete list of the required classifications of laborers and mechanics needed to adequately perform the work on the project. The form may be obtained from the department upon request or is contained herein as Appendix A.

(c) Should it be determined that a particular classification, or classifications, of laborer or mechanic has been inadvertently omitted from the original request for prevailing wage rates, the public body, its general contractor or any subcontractor employing such laborer or mechanic shall submit Arkansas Prevailing Wage Form 2 (ARK. PW-2) to the department requesting that it determine the proper prevailing rate for the classification(s) omitted. The department shall respond promptly to the request and the rate it determines shall be considered as having been made on the date of the original determination. When the need arises, ARK. PW-2 shall also be used to establish new classifications of laborer or mechanic and their prevailing rates of pay. The form is available from the department or is contained herein as Appendix B.

(d) (1) Upon receipt of a request for an omitted classification, the department shall determine if the work of the requested classification is covered by an existing classification. The department shall give written notice of its decision on the request for an omitted classification. Such notice shall include a statement that the contractor, subcontractor or public body requesting the omitted classification may object to the department's decision by filing a written objection with the department within five (5) days of receipt of the notice.

(2) The contractor, subcontractor, or public body requesting an omitted classification shall make a written objection to the department's decision on such request within five (5) days of receipt of the notice required by Regulation 2.101(d)(1). The department's decision shall constitute a final

administrative determination if no timely written objection is filed.

(e) (1) Should it be determined that a particular classification(s) of laborer or mechanic is needed, but no rate was certified for such classification on July 1, due to insufficient wage rate data, the department shall certify and determine the prevailing wage rate for such a classification(s). The department shall give written notice of its determination of the prevailing wage rate to the contractor, subcontractor or public body requesting such determination. Such notice shall include a statement that the contractor, subcontractor or public body requesting the determination may object to the determination by filing a written objection with the department within five (5) days of receipt of the notice.

(2) The contractor, subcontractor, or public body requesting the determination shall make a written objection to the department's determination within five (5) days of receipt of the notice required by Regulation 2.101(e)(1). The department's decision shall constitute a final administrative determination if no timely written objection is filed.

(3) In making a determination pursuant to Regulation 2.101(d)(1) or (e)(1), the department shall certify as prevailing the most current rate for that class or craft in that county. In the event that no rate was certified for that class or craft in that county, the department shall certify the applicable federal rates issued under the Davis-Bacon Act. In the event the application of this section would result in a skilled craft at less than the current rate for a laborer, the department shall certify as prevailing a rate for the skilled craft equal to that of the laborer.

(f) A request for residential construction rates shall be deemed a request for omitted classifications.

2.102 Use and Effectiveness of Wage Determinations.

(a) Project wage determinations shall be issued by the department upon receipt of the notification/request for a wage determination from the public body pursuant to 2.101. Such determinations shall be effective for one hundred and eighty (180) calendar days and shall contain an expiration date on its face. Such a project determination shall not be effective if it

expires before bid of the contract. Should such a determination expire between bid opening and contract award, the determination shall remain effective, provided the contract is awarded within one (1) year of bid opening. The department may grant a request for an extension if it ascertains that the rates remain prevailing.

(b) (1) The public body shall specify in the resolution or ordinance and in the call for bids for the contract that the minimum prevailing wage rates for each craft or type of worker and the prevailing wage rate for overtime work shall be paid.

(2) There shall be included in every specification for work coming under the provisions of Ark. Code Ann. §§ 22-9-301 et seq. the minimum prevailing wage rates for each craft or type of worker as determined by the department, and it shall be mandatory upon the public body, if it is supervised work, or upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workers employed by them in the execution of the contract.

(c) The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as found by the department or determined by the court on appeal shall be paid to all workers performing work under the contract.

(d) The public body awarding the contract shall require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by the contract.

Chapter 3 - PAYMENT OF PREVAILING WAGE RATES

3.100 Minimum Wage Rates and Deductions.

(a) It is mandatory upon the public body, if it is supervised work, or upon the contractor to whom the contract is awarded and upon any subcontractor under him to pay not less than the minimum prevailing wage rates for each class, classification craft or type of worker employed by them for work

on the public work project. Such minimum prevailing wage rates shall be reflected on the project wage determination issued by the department. If the public body fails to request a project determination, such failure does not relieve any public body, contractor or subcontractor from the obligation to pay minimum prevailing wage rates on the current general wage determination issued by the department on or about July 1 of each year, or to request a rate for any classification omitted from the general wage determination pursuant to 2.101(e).

(b) Payroll deductions which result in payment of less than the minimum prevailing wage rate are permissible under the circumstances or in the situations which follow:

(1) Any deduction made in compliance with the requirements of federal, state, or local law, such as federal or state withholding income taxes and federal social security taxes.

(2) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(3) Any deduction amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(4) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided however, that the following standards are met:

(A) The deduction is not otherwise prohibited by law;

(B) It is either: (i) voluntarily consented to by

the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(C) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(D) The deductions shall serve the convenience and interest of the employee.

(5) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(6) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with federal and state credit union statutes.

(7) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(8) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(9) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(10) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of Ark. Code Ann. § 11-4-213 and the regulations adopted pursuant thereto.

(11) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as

safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the federal Fair Labor Standards Act or the Minimum Wage Act of the State of Arkansas, Ark. Code Ann. § 11-4-201 et seq. or prohibited by other law. If the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either:

(A) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(B) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

(12) Any other deduction if

(A) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(B) The deduction is not otherwise prohibited by law;

(C) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(D) The deduction serves the convenience and interest of the employee.

(c) A contractor or subcontractor shall be entitled to an allowance or credit against the basic hourly rate for bona fide fringe benefits in an amount not to exceed twenty-five percent (25%) of the basic hourly rate. The same fringe benefit(s) shall not be a credit against the basic hourly rate and the required prevailing rate for fringe benefits

3.101 Fringe Benefits.

(a) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanic and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination.

(2) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits.

(b) Under the definition of "Wages", in Regulation 1.101(17), the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The "third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustee by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the

contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan.

(c) The contributions for fringe benefits must be made pursuant to a fund, plan or program. See definitions of wages in Regulation 1.101.

The phrase "fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions.

In interpreting this phrase, the department will be guided by the experience and interpretation of the U.S. Department of Labor in administering the Davis-Bacon Act.

(d) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the definition of "wages" in Regulation 1.101(17) pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits.

(e) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected.

(f) No credit may be taken as a fringe benefit for any payment which a contractor or subcontractor is obligated to make under other federal, state or local law. For example, payment of workers' compensation insurance, unemployment taxes, and Social Security taxes shall not be considered a fringe benefit.

3.102 Overtime Payments.

(a) (1) Regulation 3.101(a) permits a contractor or subcontractor to pay a cash equivalent in lieu of the fringe

benefits found prevailing. Such a cash equivalent is excluded from computing overtime payments, provided such exclusion is not violative of the overtime provision under applicable federal law, including the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq. or the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-202 et seq.

For example, the W construction contractor pays his laborers or mechanics \$6.50 in cash under a wage determination which requires a basic hourly rate of \$6.00 and a fringe benefit contribution of 50 cents per hour. The contractor pays the 50 cents per hour in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$6.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (a)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$6.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The prevailing wage determination reflects a basic hourly rate of \$6.00 an hour and fringe benefit contribution of 50 cents. The basic hourly rate or regular rate of overtime purposes would be \$6.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$6.00 rate determined as prevailing by the department.

(3) Under the same prevailing wage determination, discussed in paragraph (a)(2) of this section, the Y construction contractor who has been paying \$6.00 an hour as the basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$5.75 an hour but computes his costs of benefits as \$1.00 an hour. In this example the regular or basic hourly rate would continue to be \$6.00 an hour.

3.103 Apprentices.

Apprentices will be permitted to work at less than the

predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable journeyman wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be

permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3.104 Classification or Occupations

(a) Decisions regarding the appropriate classification of any worker, laborer, or mechanic shall be based on work actually performed by the worker, and shall not be based on job title, work history, experience, or qualifications. The U.S. Department of Labor, Dictionary of Occupational Titles may be used as a guide in determining classification, occupation, trade or craft.

(b) Workers performing duties of more than one craft or classification shall be paid the appropriate wage rate for work actually performed in each classification. For example, an employee who works four (4) hours as a carpenter and four (4) hours as a laborer shall be paid at a minimum for four (4) hours at the carpenter wage rate and four (4) hours at the laborer wage rate. See Regulation 4.100 for record-keeping requirements.

Chapter 4 - RECORD KEEPING

4.100 Records to be Maintained.

(a) The contractor and each subcontractor shall keep and maintain accurate payroll and related records which contain the following information:

(1) Name, address, and social security number of each employee;

(2) The correct classification of each employee, including any apprentice;

(3) The hourly rate of wages paid, including bona fide fringe benefits or cash equivalents;

(4) Daily and weekly number of hours worked;

(5) Deductions made and actual wages paid; and

(6) Receipts or other records for actual expenditures when any deduction for the "reasonable cost" of

board, lodging or other facilities is made pursuant to Regulation 3.100(b)(10) herein.

(b) Separate and accurate records shall be maintained for daily and weekly hours worked and wages actually paid for each craft or classification, on those workers performing duties of more than one craft or classification. In lieu of such separate records, the contractor or subcontractor may pay the worker for all hours worked on the project at the highest rate applicable to the worker performing duties of more than one craft.

(c) For each apprentice, the contractor or subcontractor shall maintain a copy of the apprentice certification issued by the U.S. Department of Labor, Bureau of Apprenticeship and Training.

(d) The records required by this Regulation are in addition to and not in lieu of other records or writings required by state and federal law.

4.101 Record Accessibility.

(a) All records required by Regulation 4.100 shall be open for inspection or transcription by the department or the public body awarding the contract at all reasonable hours.

(b) All records required by Regulation 4.100 shall be maintained at the project site or in a central office located in the State of Arkansas. If it is not feasible to maintain these records in Arkansas, the contractor or subcontractor may seek an exemption from the director, provided adequate arrangements are made for the accessibility required by Regulation 4.101(a).

(c) All payroll records or wage records submitted to the department are confidential and shall not be disclosed to any unauthorized person, or be taken or with drawn, copied, or removed from the custody of the department or its employees.

(d) The Department may require records maintained pursuant to 4.100 of this regulation to be submitted by mail to the Director or his authorized representative.

4.102 Record Retention.

All records required by Regulation 4.100 shall be maintained for a period of three (3) years.

4.103 Posting Wage Scale.

The prevailing wage determination issued for a project shall be posted by the general contractor in a prominent and easily accessible place at the work site. Easily accessible shall be a place which is actually accessible to all workers on the site and is commonly used by the workers on site.

4.104 Statement of Intent to Pay Prevailing Wages.

The general contractor and all subcontractors required to be listed in the bid proposal pursuant to the provisions of the Ark. Code Ann. §22-9-204 shall complete a Statement of Intent to Pay Prevailing Wages. Such statements shall be filed by the general contractor with the department within thirty (30) days of receipt of the official notice to proceed. Such filings shall be on a form approved by the director. The form may be obtained from the department or is contained herein as Appendix C.

Chapter 5 - ADMINISTRATION AND ENFORCEMENT.

5.100 Prevailing Wage Advisory Committee

(a) A Prevailing Wage Advisory Committee was established by Executive Order 94-06 to advise the Department on the administration and enforcement of the prevailing wage law and to review the prevailing wage rates and make recommendations to the Director of the Department of Labor, regarding such rates.

(b) The committee shall review the Department's staff recommendation regarding prevailing wage rates no later than twenty (20) days prior to the annual certification of wage rates and shall make such recommendations to the Director as it deems necessary.

(c) The committee shall meet periodically and advise the Director regarding such matters as:

- (1) the adoption, amendment, modification or repeal of administrative regulations;
- (2) the need for legislation;

(3) the effectiveness of the Department's enforcement activities; and

(4) the effectiveness of the means and methods used to determine prevailing wage rates.

5.101 Annual Wage Determinations.

(a) Wage determinations shall be made annually on or about July 1 of each year and shall remain in effect until superseded by a new determination.

(b) The department shall give at least twenty (20) days notice of its intent to certify new wage determinations. Such notice shall be (1) mailed to all persons who shall have requested advance notice of wage determinations, and (2) published for a period of seven (7) consecutive days in a newspaper of general daily circulation throughout the state.

(c) A certified copy of the determinations shall be filed on or about July 1 of each year in the department in Little Rock, Arkansas. Copies shall be furnished to all persons requesting them.

5.102 Contesting Wage Determinations.

(a) (1) At any time within thirty (30) days after the certified copies of the determinations have been filed with the department, any person who may be affected thereby may object in writing to the determination, or such part thereof as he deems objectionable, by filing a written notice with the department stating the specific grounds of the objection.

(2) Within thirty (30) days of the receipt of the objection, the department shall set a date for a hearing on the objection, which date shall be within sixty (60) days of the receipt of the objection.

(3) Written notice of the time and place of the hearing shall be given to the objectors and any other party at least ten (10) days prior to the date set for the hearing.

(4) The department, at its discretion, may hear each written objection separately or consolidate for hearing any two (2) or more written objections.

(b) (1) At the hearing, the department shall

introduce in evidence the investigation it instituted and other facts which were considered at the time of the original determination and which formed the basis for its determination.

(2) The department, any objectors, or any other interested party may thereafter introduce any evidence material to the issues.

(c) (1) Within ten (10) days of the conclusion of the hearing, the department must rule on the written objections and make such final determination as it believes the evidence warrants.

(2) Immediately upon the final determination, the department shall file a certified copy of its final determination with the department and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

(d) (1) The final decision by the department concerning the prevailing wages in the county shall be subject to review by the circuit court of the county in which the determination is made, but only if suit is started within thirty (30) days by any person who is a party thereto.

(2) All proceedings in any court affecting a determination of the department under the provisions of this subchapter shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

(3) The review by the circuit court shall be on the record made before the department, and the decision of the department shall be sustained if supported by substantial evidence.

(4) The finding of the department ascertaining and declaring the prevailing hourly rate of wages shall be final unless reviewed under the provisions of Ark. Code Ann. § 22-9-313 and this Regulation.

5.103 Investigations.

(a) The department shall cause to be made such investigations as may be necessary to assure compliance with Ark. Code Ann. §§ 22-9-301 et seq. and these regulations. Such investigations may be initiated by the department, upon referral

of a dispute by a public body, upon request of a contractor or subcontractor or upon complaint of an employee or employees' representative.

(b) Public bodies and agencies, contractors, subcontractors, and workers shall cooperate with any authorized representative of the department in the inspection of records, in interviews with witnesses, and with all other aspects of an investigation.

(c) If after investigation, the department finds that there has been noncompliance or willful violation of Ark. Code Ann. §§ 22-9-301 et seq. or these regulations, the department shall notify in writing the contractor, subcontractor or public body charged with the violation(s) of the following:

(1) the project name and its location;

(2) the nature of the noncompliance or willful violation;

(3) the dates of the noncompliance or willful violation;

(4) the name(s) of the employee(s);

(5) the classification of the employee(s);

(6) the amount of back wages computed or assessed on behalf of the employee(s); and

(7) the contractor, subcontractor or public body has the right to contest the department's determination or assessment by way of an administrative hearing, provided a written request for such a hearing is made to the department within fifteen (15) days of receipt of this notice.

(d) The contractor, subcontractor or public body charged with noncompliance or willful violation shall file written notice with the department that he/she/it contests the department's determination or assessment and requests a hearing within fifteen (15) days after receiving notice in accordance with 5.102(c) of this Regulation. If such a written notice is not filed with the department the determination or assessment shall be the final administrative determination of the Director of Labor.

(e) A contested determination or assessment shall be scheduled for an administrative hearing.

(f) In addition to notice of noncompliance a contractor or subcontractor may be charged by the department with a willful violation of the provisions of Ark. Code Ann. §22-9-301

et seq. Willful violation may mean, but is not limited to, any one or more of the following:

(1) Clear and knowing failure to pay the prevailing wage for a worker performing work under a certain classification despite the worker's certification, registration, or licensure by a licensing board, department or commission for that classification.

(2) Repeated noncompliance with the provisions of Ark. Code Ann §22-9-301 et seq.

(3) Use by the contractor and/or submission to the department of false payroll records.

(4) Failure to pay amounts found to be owed pursuant to a final administrative determination and failure to pursue an appeal from such determination.

5.104 Wage Claims.

(a) Any worker employed by a public body, contractor or subcontractor on work covered by the provisions of Ark. Code Ann. § 22-9-301 et seq. who shall be paid for his services less than the applicable minimum prevailing wage rate shall have a right to file a claim or complaint with the department for whatever differences there may be between the wages paid and the minimum prevailing wage rate.

(b) A wage claim shall be filed on a form approved by the director. A copy of such form may be obtained from the department or is contained herein as Appendix D.

(c) The department shall notify in writing the contractor, subcontractor, or public body of the wage claim. Such notice shall include the following:

(1) a copy of the wage claim;

(2) a statement of the back wages due if the worker's allegations are true; and

(3) a statement that if the validity of the claim is denied, a written denial must be made to the department within fifteen (15) days of receipt of this notice.

(d) The contractor, subcontractor, or public body against whom a claim is filed shall make a written response to the claim within fifteen (15) days of receipt of the notice required by 5.103(c). Failure to make a written response or

denial shall be considered an admission of the worker's allegations and the department shall enter a final administrative determination to that effect.

(e) A contested wage claim shall be scheduled for an administrative hearing.

(f) All claims shall be filed with the department not more than thirty (30) days after payment is due and not paid.

(g) Pursuant to Ark. Cod Ann §22-9-305(b), the department may seek a civil money penalty against any workman who knowingly submits to the department a false wage claim. "False wage claim" for these purposes shall mean a wage claim made by the workman and based on false and untrue representations or information given by the workman and known by the workman to be false or untrue at the time the claim is made and/or such claim is made merely for the purposes of harassment.

5.105 Withholding of Payments.

(a) The public body in charge of the project and the general contractor shall be provided a copy of any notice given pursuant to 5.102(c) or 5.103(c). They shall also be provided a copy of the final administrative determination.

(b) If upon a final administrative determination of a matter, the department finds that there is unpaid wages due any worker(s), the department shall request that the public body withhold so much of accrued payments under the contract as are necessary to pay this sum.

(c) The public body shall make payment to the Department of Labor upon entry of final administrative order issued by the department.

5.106 Administrative Proceedings.

(a) Administrative proceedings shall conform to the Arkansas Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 et seq.

(b) Contested matters shall be referred to a hearing officer designated by the director.

(c) Notice of all administrative hearings shall be

provided to each party and shall include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is held; and

(3) a short and plain statement of the matters of fact and law asserted.

(4) a statement that if the contractor is found by final administrative order to have willfully violated the provisions of Ark. Code Ann. § 22-9-301 et seq., the contractor shall be ineligible to bid on or be awarded any public works job for a period of two (2) years from the date of the final administrative order.

(d) The record.

(1) The initial record before the hearing officer shall in contested matters under Regulations 5.102 and 5.103 shall consist of the notice provided pursuant to 5.102(c) and 5.103(c) and the written response thereto. A written request for a hearing shall be deemed a general denial.

(2) In addition, the record shall include:

A. All pleadings, motions, and intermediate rulings;

B. Evidence received or considered, including, on request of any party, a transcript of oral proceedings or any part hereof;

C. A statement of matters officially noticed;

D. Offers of proof, objections, and rulings thereon;

E. Proposed findings and exceptions thereto;

F. All staff memoranda or data submitted to the hearing officer; and

G. A final administrative decision which shall include findings of fact and conclusions of law.

(e) Service.

(1) Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing by certified mail to the last known address. When a party is represented by an attorney, the service should be upon

the attorney.

(2) An original and one copy of all pleadings and other documents shall be filed with the designated hearing officer before whom the case is pending and one copy with the attorney representing the department.

(f) The parties may appear in person, by counsel, or otherwise; and

(g) Failure to appear at the administrative level shall result in a default order or finding against such party, absent a showing of unavoidable casualty or excusable neglect.

(h) Appeal. Any appeal or judicial review of any final agency action, decision or order shall be made pursuant to Ark. Code Ann. § 25-15-212.

5.107 Enforcement.

(a) The department shall enforce the provisions of Ark. Code Ann. § 22-9-301 et seq. and these regulations. Such enforcement activity may include, but is not limited to:

(1) instituting actions for the recovery of the penalties prescribed by Ark. Code Ann. § 22-9-305;

(2) instituting actions for the recovery of back wages due workers; and

(3) instituting actions for injunctive relief.

(b) The department may rely on the interpretations of the U.S. Department of Labor and federal precedent established under the Davis-Bacon Act in interpreting and applying the provisions of Ark. Code Ann. § 22-9-301 et seq. and these Regulations.

(c) The department shall maintain a list of contractors or subcontracts found to be ineligible to bid on public works contracts by final administrative order or determination. The list shall include any firm, partnership, corporation or other entity in which such ineligible contractor is an officer, stockholder or has a financial interest or supervises or directs work.

(1) The department shall compile a quarterly list which shall include the names of ineligible contractors and the dates on which the latest violations of such contractors occurred.

(2) The department shall notify each

contractor whose name appears on the quarterly list by mailing a copy of the list along with a cover letter informing the contractor that the list contains the name of the contractor and date of violations.

(3) Upon request, the department shall mail such quarterly list to any public body in this state which may award public works contracts.

5.108 Civil Penalties

(a) Any officer, agent, or representative of any public body who knowingly violates, or omits to comply with the provisions of Ark. Code Ann. § 22-9-301, et seq., and any contractor or subcontractor, or agent or representative thereof, doing public works who neglects to keep an accurate record of the names, addresses, social security number, occupation or work classification, hours worked and actual wages paid to each worker employed by him in connection with the public works, or who refuses to allow access to the records at any reasonable hour to any person authorized to inspect the records by the Department, or who knowingly submits to the department false payroll or wage information, shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00) for each violation. Each day the violation continues shall with respect to each employee constitute a separate offense. In no event shall the civil penalty exceed ten percent (10%) of the contract or subcontract or ten percent (10%) of any unpaid wages due employees, whichever sum is greater.

(b) Any workman who knowingly submits to the department a false claim for unpaid wages under the provisions of this subchapter shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00).

(c) The Director of the Department of Labor shall determine the amount of any civil penalty due. Such determination shall be final, unless within fifteen (15) days after receipt of notice thereof, the workman, contractor, subcontractor, or agent or representative thereof charged with the violation notifies the Director of the Department of Labor in writing that

he contests the proposed penalty. Notice of a proposed penalty shall be delivered by certified mail or by any other means authorized by law for service of process. In the event a penalty is contested, a final determination shall be made pursuant to the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(d) The amount of such penalty when finally determined may be recovered in a civil action brought by the Director of the Department of Labor in a court of competent jurisdiction, without paying costs or giving bond for costs.

(e) Assessment of a civil penalty by the Director of the Department of Labor shall be made no later than three (3) years from the date of the occurrence of the violation.

5.109 Severability

If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions or applications of the regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

5.110 Repealer and Effective Date.

(a) All previous regulations promulgated pursuant to the authority of Ark. Code Ann. § 22-9-307 are hereby repealed.

(b) The effective date of these regulations is the 31st day of January, 1996.

PREVAILING WAGE LAW

22-9-301. Payment required.

It is declared to be the policy of the State of Arkansas that a wage of not less than the minimum prevailing hourly rate of wages for work of a similar character in the county or locality in which the work is performed and not less than the prevailing hourly rate of wages for holiday and overtime work shall be paid to all workmen employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

22-9-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Construction" means construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, where the cost of all labor and material exceeds seventy-five thousand dollars (\$75,000);

(2) "Department" means the Arkansas Department of Labor;

(3) "Minimum prevailing wage rates" means the wages paid, generally, in the county in which the public works are being performed, to workmen engaged in work of a similar character;

(4) "County" means the county where the physical work upon the public works is performed;

(5) "Maintenance work" means the repair, but not the replacement, of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased;

(6) "Public body" means the State of Arkansas or any officer, board, or commission of the state, any county, city, municipality or other political subdivision, or any of the agencies thereof;

(7) "Public works" means all works constructed for public use, whether or not done under public supervision or direction or paid for wholly or in part out of public funds, but it does not include any work done for or by any drainage, improvement, or levee district;

(8) "Workmen" means laborers, workmen, and mechanics, but special rates for apprentices shall apply only when the apprentices are registered in a recognized management-labor apprenticeship training program;

(9) "Locality" means a specific county or a specific group of counties in the same geographic area of the state as determined by administrative regulation of the department.

22-9-303. Exceptions.

(a) The provisions of this subchapter shall not apply to workers who are employed as part-time or full-time employees of any public body; it is not the intent of this subchapter to prohibit any public body from performing necessary improvements of their public property, either by construction or maintenance, with public employees.

(b) Nothing contained in this subchapter shall be construed to apply to or affect highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department.

(c) This subchapter shall not affect any public school construction unless federal matching funds are employed in paying for the construction.

22-9-304. Construction of subchapter.

(a) Nothing in this subchapter shall be construed to prohibit the payment to any worker employed on any public works of more than the prevailing rate of wages.

(b) Nothing in this subchapter shall be construed to limit the hours of work which may be performed by any worker in any particular period of time.

22-9-305. Penalties.

(a) Any officer, agent, or representative of any public body who knowingly violates, or omits to comply with, any of the provisions of this subchapter, and any contractor or subcontractor, or agent or representative thereof, doing public works who neglects to keep an accurate record of the name, address, social security number, occupation or work classification, hours worked, and actual wages paid to each

worker employed by him in connection with the public works, or who refuses to allow access to the records at any reasonable hour to any person authorized to inspect the records under this subchapter, or who knowingly submits to the department false payroll or wage information, shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000) for each violation. Each day the violation continues shall, with respect to each employee, constitute a separate offense. In no event shall the civil penalty exceed ten percent (10%) of the contract or subcontract or ten percent (10%) of any unpaid wages due employees under the provisions of this subchapter, whichever sum is greater.

(b) Any workman who knowingly submits to the department a false claim for unpaid wages under the provisions of this subchapter shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000).

(c)(1) The Director of the Department of Labor shall determine the amount of any civil penalty due this section.

(2)(A) Such determination shall be final, unless within fifteen (15) days after receipt of notice thereof, the workman, contractor, subcontractor, or agent or representative thereof charged with the violation notifies the Director of the Department of Labor in writing that he contests the proposed penalty.

(B) Notice of a proposed penalty shall be delivered by certified mail or by any other means authorized by law for service of process.

(3) In the event a penalty is contested, a final determination shall be made pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) The amount of such penalty when finally determined may be recovered in a civil action brought by the Director of the Department of Labor in a court of competent jurisdiction, without paying costs or giving bond for costs.

(d) Sums collected under this section shall be paid into the General Revenue Fund of the State Treasury.

(e) Assessment of a civil penalty by the Director of the Department of Labor shall be made no later than three (3)

years from the date of the occurrence of the violation.

22-9-306. Powers of department.

(a)(1) The director or his authorized representatives shall have authority to:

(A) Administer oaths;

(B) Take, or cause to be taken, the depositions of witnesses; and

(C) Require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation or hearing.

(2) The subpoena shall be signed and issued by the department's authorized representative.

(3) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of any circuit court or the judge thereof, upon application of the department's authorized representative, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein.

(b) The director or his authorized representatives shall have authority to enter and inspect any construction site, place of business, or place of employment of any public body or any contractor or any subcontractor doing public works for the purpose of examining, inspecting, and copying any or all books, registers, payrolls, and other records as he may deem necessary or appropriate, and questioning employees, for the purpose of ascertaining compliance with the provisions of this subchapter and regulations issued thereunder.

(c) The director or his authorized representatives shall have authority to require from any contractor or subcontractor doing public works full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, occupations, and such other information pertaining to his employees as the director or his authorized representative may deem necessary or appropriate.

(d) The authorized representative of the department

shall have the power to certify to official acts.

(e)(1) The director is authorized to institute legal action in the name of the State of Arkansas, without paying costs or giving bond for costs, to recover any wages which he determines to be due to employees or workmen under this subchapter. No legal action shall be brought by the director until after notice and opportunity for hearing pursuant to the Arkansas Administrative Procedure Act (§25-15-201 et seq.) and entry of a final administrative order. Following any appeals taken pursuant to the Administrative Procedure Act, the director shall be entitled to enforce his final administrative order in any court of competent jurisdiction. The director's findings of fact shall be conclusive in any such proceeding.

(2) The director, if successful, shall be entitled to attorneys fees. Such sums shall be placed in the General Revenue Fund of the State Treasury.

(3) Nothing in this subsection shall be construed so as to relieve an unsuccessful defendant from paying costs.

(f) The director or his authorized representatives shall have the authority to:

(1) Investigate as to any violation of this subchapter and the regulations issued thereunder;

(2) Institute actions for the penalties prescribed in this subchapter;

(3) Institute legal action to recover any wages which he determines to be due to employees or workmen under this subchapter;

(4) Seek injunctive relief; and

(5) Enforce generally the provisions of this subchapter and the regulations issued thereunder.

22-9-307. Rules and regulations.

The department shall establish rules and regulations for the purpose of carrying out the provisions of this subchapter.

22-9-308. Ascertainment of minimum prevailing wage before awarding contract - Specification of wage rate - Contractor's bonds.

(a) Before any public body, excluding the Arkansas

State Highway and Transportation Department, awards a contract or begins supervised construction for public works, it shall notify the department to ascertain the prevailing hourly rate of wages in the county in which the work is to be performed for each craft or type of worker needed to execute the contract or project.

(b)(1) The public body shall specify in the resolution or ordinance and in the call for bids for the contract that the minimum prevailing wage rates for each craft or type of worker and the prevailing wage rate for holiday and overtime work shall be paid.

(2) There shall be included in every specification for work coming under the provisions of this subchapter the minimum prevailing wage rates for each craft or type of worker as determined by the department, and it shall be mandatory upon the public body, if it is supervised work, or upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workers employed by them in the execution of the contract.

(c) The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as found by the department or determined by the court on appeal shall be paid to all workers performing work under the contract.

(d) The public body awarding the contract shall require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by the contract.

22-9-309. Posting of wage scale - Withholding of payments.

(a) The scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work.

(b) There may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer or agency to pay to laborers and mechanics employed by the contractor or subcontractor, if

any, of the work, the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor, subcontractor, or their agents.

(c) Payment for the withholding required under subsection (b) of this section shall be made upon entry of a written final administrative order by the Department of Labor directing the public body or agency to release such funds to the Department of Labor directing the public body or agency to release such funds to the Department of Labor.

22-9-310. Records.

(a) The contractor and each subcontractor shall keep an accurate record showing the names, addresses, social security numbers, occupations or work classifications, and hours worked of all workers employed by them in connection with the public works, and showing the actual wages paid to each of the workers.

(b) These records shall be open at all reasonable hours to the inspection of the department or the public body awarding the contract, its officers, and agents.

(c) The contractor and each subcontractor shall, within ten (10) days after receipt of a written request from the department, the public body awarding the contract, or both, forward a certified copy of these records to the person making the request.

22-9-311. Workers receiving less than stipulated rates.

(a) Any worker employed by a public body or by a contractor or subcontractor who shall be paid for his services a sum less than the stipulated rates for work done under the contract shall have the right to file a complaint with the department for whatever differences there may be between the amount so paid and the rates provided by the contract.

(b) After investigation by the department, if the complaint is found to be just, it shall be prosecuted by the department without cost to the worker.

(c)(1) All claims shall be filed with the department not more than thirty (30) days after the certificate of

substantial completion is submitted to the public body.

(2) If a claim is timely filed, a worker shall be entitled to recover any unpaid wages due over the life of the public works project, but in no event shall an action be brought more than three (3) years after the date the wages became due and owing.

(d) Nothing in this section shall be construed to limit or restrict the director's authority to seek recovery of unpaid wages pursuant to § 22-9-306.

22-9-312. Termination of contractor upon failure to pay wage rate - Void contracts.

(a) Every contract within the scope of this subchapter shall contain the provision that in the event it is found by the contracting officer or public body that any laborer or mechanic employed by the public body or by the contractor or subcontractor, if any, directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the public body concerned may, by written notice to the contractor, terminate the contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the public body concerned for any excess costs occasioned thereby.

(b) Any contract made and entered into within the scope of this subchapter in violation thereof shall be void.

22-9-313. Annual determination of wage rates - Procedure.

(a)(1) The department shall investigate and determine the prevailing hourly rate of wages in the counties.

(2) Determinations shall be made annually on or about July 1, of each year and shall remain in effect until superseded by a new determination.

(3) In determining prevailing rates, the department shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, wage determinations by the United States Department of Labor, and

such rates as are paid generally within the locality.

(b) A certified copy of the determination shall be filed immediately in the department in Little Rock, and copies shall be furnished to all persons requesting them.

(c)(1) At any time within thirty (30) days after the certified copies of the determinations have been filed with the department, any person who may be affected thereby may object in writing to the determination, or such part thereof as he deems objectionable, by filing a written notice with the department stating the specific grounds of the objection.

(2) Within thirty (30) days of the receipt of the objection, the department shall set a date for a hearing on the objection, which date shall be within sixty (60) days of the receipt of the objection.

(3) Written notice of the time and place of the hearing shall be given to the objectors and any other interested party at least ten (10) days prior to the date set for the hearing.

(4) The department, at its discretion, may hear each written objection separately or consolidate for hearing any two (2) or more written objections.

(d)(1) At the hearing, the department shall introduce in evidence the investigation it instituted and other facts which were considered at the time of the original determination and which formed the basis for its determination.

(2) The department, any objectors, or any other interested party may thereafter introduce any evidence material to the issues.

(e)(1) Within ten (10) days of the conclusion of the hearing, the department must rule on the written objections and make such final determination as it believes the evidence warrants.

(2) Immediately upon the final determination, the department shall file a certified copy of its final determination with the department and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

(f)(1) The final decision by the department concerning the prevailing wages in the county shall be subject to review by the circuit court of the county in which the determination is made, but only if suit is started within thirty

(30) days by any person who is a party thereto.

(2) All proceedings in any court affecting a determination of the department under the provisions of this subchapter shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

(3) The review by the circuit court shall be on the record made before the department, and the decision of the department shall be sustained if supported by substantial evidence.

(4) The finding of the department ascertaining and declaring the prevailing hourly rate of wages shall be final unless reviewed under the provisions of this section.

22-9-314. Certain contractors ineligible to bid on public works contracts - Quarterly lists.

(a)(1) Any contractor or subcontractor determined by the department to have violated the provisions of this subchapter shall be ineligible to bid on or be awarded any public works contract or to perform any construction work in any manner for any public body for a period of two (2) years from the date of the final administrative determination.

(2) Any firm, partnership, corporation or other entity in which such ineligible contractor is an officer, stockholder, or has a financial interest, or supervises or directs work shall be ineligible to bid on or be awarded any public works contract or perform any construction work in any manner for any public body for a period of two (2) years after the date of such determination.

(b) Notwithstanding the provisions of subsection (a) of this section, any contractor or subcontractor may complete any work in progress or contract awarded prior to the date of the contractor's or subcontractor's ineligibility.

(c)(1) The department shall compile a quarterly list which shall include:

(A) The names of all contractors which, by a final administrative determination, have been found to be in noncompliance with the provisions of this subchapter after January 1, 1996, and within the previous two (2) years as of the date of such list; and

(B) The dates on which the latest violations of such contractors occurred.

(2)(A) Upon request, the department shall mail such quarterly list to any public body in this state which may award public works contracts.

(B) It shall be the duty of the public body to hold such contractor ineligible to bid on or to be awarded any public works contract or to perform any construction work in any manner for the public body pursuant to subsection (a) of this section.

(d) Any contractor or subcontractor shall submit a bid, be awarded a contract, or begin performance of construction while ineligible pursuant to the provisions of this section may have its state contractor's license suspended for a period of time as set by the State Contractors Licensing Board.

(e)(1) Any public works contract awarded to an ineligible contractor, or on which an ineligible subcontractor performs, may be declared in default by the public body.

(2)(A) Additionally, the public body may require the bonding company or the general contractor to furnish a replacement contractor at no additional cost to the public body.

(B) In such an event, the bonding company or general contractor shall be expeditious in maintaining the original schedule for completion of the contract, allowing no more than thirty (30) days to lapse between notice and furnishing a replacement contractor or subcontractor satisfactory to the public body.

(f) Nothing in this section shall be construed as a waiver of sovereign immunity or as creating a cause of action for money damages against any public body.

22-9-315. Confidentiality of payroll records.

All payroll records or wage records submitted to the department pursuant to the provisions of this subchapter for the purpose of determining prevailing wage rates or determining compliance with the provisions of this subchapter and the administrative regulations issued thereunder are confidential and shall not be disclosed to any unauthorized person or be taken, or withdrawn, copied, or removed, from

the custody of the department or its employees.